

## **EXHIBIT #1**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TRANSCIENCE CORPORATION & ) Civil Action No. 13 CV 6642  
YOLANDA VON BRAUNHUT )  
(individual), )  
 )  
Plaintiffs, ) AFFIDAVIT OF  
-against- ) SAM HARWELL  
 )  
BIG TIME TOYS, LLC, )  
 )  
Defendant. )  
-----x

STATE OF TENNESSEE )  
 ) ss:  
COUNTY OF DAVIDSON )

I, Sam Harwell, being duly sworn, deposes and says:

1. I am an officer of defendant Big Time Toys, LLC. ("defendant" or "BTT").
2. I make this Affidavit to the best of my personal knowledge.
3. Since about October 2013, BTT has sourced and supplied its own pouches for the Sea-Monkeys product in China.
4. To the best of my knowledge, BTT's manufacture of pouches (and contents) in China and importing them into the U.S. as part of a "kit" are in compliance with U.S. law.
5. In about November 2012, a *force majeure* event occurred - containers of Sea-Monkeys products destined to WalMart were quarantined in the U.S. by USFWS and then required to be

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returned to China.

6. At that time, BTT's inventory of pouches was sufficient to cover its foreseeable needs. However, as a partial solution to the USFWS issues, it was necessary to export additional pouches to China. A USFWS record of U.S. made pouches exported to China allowed U.S. made pouches to be imported into the U.S. from China as part of a "kit."<sup>1</sup>

7. At BTT's request, in about November 2012, 85,000 sets of pouches manufactured by plaintiffs were shipped to China in accordance with USFWS requirements. That allowed containers to be reimported into the U.S., but also left BTT with enough pouch inventory for most of calendar year 2013.

8. Then, following the *force majeure* event, by letter dated January 18, 2013 (Exhibit D to plaintiffs' complaint), plaintiffs repudiated the License Agreement and Purchase Agreement, making clear they would no longer do business with defendant under those agreements. Defendant continued conducting the Sea-Monkeys business.

9. During January 2013 and part of February 2013, plaintiffs and defendant exchanged settlement proposals.

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<sup>1</sup> The Sea-Monkeys product (or "kit") contains two principal components; (i) a small plastic tank and related paraphernalia manufactured at defendant's direction in China; and (ii) a set of three "pouches", which plaintiffs manufactured in the U.S. and sold to defendant. Under the License Agreement and Purchase Agreement, pouches manufactured by plaintiffs in the U.S. were shipped to defendant's manufacturer in China, inserted into kits and shipped to various countries for sale.

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2011 and 2012.

17. The contents of the Sea-Monkeys pouches are commonly known and readily available.

18. To my knowledge, there are seven recognized species of artemia brine shrimp. The hybrid species, "nyos" (for "New York Ocean Science Laboratory" (which no longer exists)) claimed by plaintiffs<sup>2</sup> is not one of them. It is artificial. "Artemia salina", the species contained in the pouches, as evidenced by the AQIS submissions, are found worldwide and are a widely used food item.

19. Prior to sourcing its own pouches, defendant conducted its own testing and concluded that the artemia, the food and the water treatment from its sources produce results (particularly the number of brine shrimp that hatch, their size and life expectancy) that are indistinguishable from the pouches supplied by plaintiffs.

20. BTT's supplying its own pouches will not harm the brand.

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<sup>2</sup> The reference to "artemia nyos" is found on the packaging that plaintiffs required defendant to utilize with the "kits".

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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

*Sam Harwell, President*  
Sam Harwell, President B3 Timetags, LLC

Dated: April 28, 2014

Sworn to and subscribed before  
me this 28<sup>th</sup> day of April, 2014.

*Sherrie F. Hicks*  
Notary Public of the  
State of Tennessee  
Expiration 8-23-2016

